

Exhibit S Cause #

**39 Am. Jur. 2d Highways, Streets, and Bridges § 147**

American Jurisprudence, Second Edition | May 2021 Update

**Highways, Streets, and Bridges**

John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Glenda K. Harnad, J.D.; Janice Holben, J.D.; and Jeffrey J. Shampo, J.D.

**IX. Use of Way**

**A. Right to Use**

**§ 147. Superior rights of public**

[Topic Summary](#) | [Correlation Table](#) | [References](#)

**West's Key Number Digest**

West's Key Number Digest, **Highways**  167

The public right to the use of a street for travel is absolute and paramount,<sup>1</sup> and greater than that of an individual to occupy it for other purposes.<sup>2</sup> Streets and highways are primarily for the benefit of the traveling public, and only incidentally for the benefit of property owners along them.<sup>3</sup>

The rights of the owner of the underlying fee are always subordinate to those of the public, and may be diminished as the public needs increase.<sup>4</sup> When a highway is used for any public purpose not inconsistent with or prejudicial to its use for highway purposes, the mere disturbance of the rights of light, air, and access of abutting owners on such a highway by the imposition of a new use, consistent with its use as an open public street, must be tolerated by such owners.<sup>5</sup> An abutting owner's rights<sup>6</sup> must be exercised with due regard to the safety of the public,<sup>7</sup> and so as not to interfere unreasonably with its use of the way,<sup>8</sup> and so to inconvenience others as little as is reasonably practicable.<sup>9</sup>

On the other hand, although the public has a legitimate right to the use and enjoyment of a public roadway, that right must be exercised in a reasonable manner and with due regard for the right of the adjoining property owners to use and enjoy their property.<sup>10</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

**Footnotes**

<sup>1</sup> [Augusta v. Kwortnik](#), 161 A.D.3d 1401, 78 N.Y.S.3d 726 (3d Dep't 2018).

<sup>2</sup> [Pugh v. City of Des Moines](#), 176 Iowa 593, 156 N.W. 892 (1916); [Etchison v. Frederick City](#), 123 Md. 283, 91 A. 161 (1914); [Texas Co. v. Grant](#), 143 Tex. 145, 182 S.W.2d 996 (1944).

<sup>3</sup> [Concerned Community Involved Development, Inc. v. City of Houston](#), 209 S.W.3d 666 (Tex. App. Houston 14th Dist. 2006).

The right to use of the highways rests with the whole people of the state, not with the adjacent proprietors. [Augusta v.](#)

Kwortnik, 161 A.D.3d 1401, 78 N.Y.S.3d 726 (3d Dep't 2018).

<sup>4</sup> Quigley v. Village of Hibbing, 268 Minn. 541, 129 N.W.2d 765, 20 A.L.R.3d 1353 (1964); Anderson v. Stuarts Draft Water Co., 197 Va. 36, 87 S.E.2d 756 (1955).

<sup>5</sup> Augusta v. Kwortnik, 161 A.D.3d 1401, 78 N.Y.S.3d 726 (3d Dep't 2018).

<sup>6</sup> §§ 130 to 141.

<sup>7</sup> §§ 319 to 325.

<sup>8</sup> Birmingham Ry., Light & Power Co. v. Smyer, 181 Ala. 121, 61 So. 354 (1913); Massey v. Worth, 39 Del. 211, 197 A. 673 (Super. Ct. 1938).

<sup>9</sup> City of Lawrenceburg v. Lay, 149 Ky. 490, 149 S.W. 862 (1912).

<sup>10</sup> West v. National Mines Corp., 168 W. Va. 578, 285 S.E.2d 670, 25 A.L.R.4th 1179 (1981).